
OPINION OF THE PUBLIC ACCESS COUNSELOR

GABRIEL M. WHITLEY,
Complainant,

v.

EVANSVILLE VANDERBURGH SCHOOL CORP.,
Respondent.

Formal Complaint No.
21-FC-87

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Board of Trustees for Evansville Vanderburgh School Corporation violated the Open Door Law.¹ Attorney Patrick Shoulders filed an answer on behalf of the Board. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 28, 2021.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

This case examines the propriety of a security presence outside a school board meeting when the room has reached safe capacity and whether excluding individuals was within the parameters of the Open Door Law.

According to the complainant Gabriel Whitley, the Evansville Vanderburgh School Corporation Board of Trustees (Board) held a “town hall” on June 21, 2021. At this meeting, approximately 54 attendees arrived yet only five were permitted to enter. An armed security presence prevented access to the building. The capacity limit was not announced in advance.

Whitley filed his complaint on June 28, 2021.

For its part, the Board acknowledges the 30-minute town hall took place between a properly noticed executive session and a regular public meeting. It was scheduled between 5:00 pm and 5:30 and the notice indicated seating may be limited due to public health reasons. The Board does not deny a security presence was available to mitigate any threats that protesters allegedly posed to board members. Those efforts were seemingly successful as the protest was peaceful.

The Board maintains that while only a limited number of people were allowed inside the room at once, attendees were rotated out and in so that those who wished to participate were able to do so, including the complainant who was eventually granted entry.

ANALYSIS

1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

Evansville Vanderburgh School Corporation is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. Moreover, the EVSC Board is a governing body for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, unless an exception applies, all meetings of the school board must be open at all times to allow members of the public to observe and record.

1.1 ODL definitions

Under the ODL, "meeting" means "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Ind. Code § 5-14-1.5-2(c).

"Official action" means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Ind. Code § 5-14-1.5-2(d). Notably, the ODL defines "final action" as "a vote by the governing body on any motion, proposal, resolution,

rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g). The ODL also mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c). Additionally, “public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

2. Whitley’s claims

It is difficult to assess exactly which portion of the Open Door Law Whitley claims the Board violated. He did not indicate in his complaint whether he himself was granted entry.

The town hall, which took place between the executive session and the regular meeting, appears to be a public comment forum for parents and community members to express support or opposition to school initiatives. While the Open Door Law does not provide for such a forum, this office encourages the practice.

To the extent it is conducted on a rotating basis where attendees are shuffled in and out based on capacity limits, this office has no quarrel with the procedure during a public health emergency. In regard to a security presence, officers are neither a barrier to access nor did the complainant indicate he felt intimidated by their actions – only that security was on-site.

Without more, the June 21 executive session, town hall, and regular meeting appears to be in order with no deficiencies or noncompliance with the Open Door Law.

Notably, no other attendees reached out to this office with grievances regarding the June 21 meeting.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Board of Trustees for Evansville Vanderburgh School Corporation did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned to the right of the conclusion text.

Luke H. Britt
Public Access Counselor